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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b), )

Table of Allotments, )

FM Broadcast Stations. )

(Avon, North Carolina) )

MM Docket No. 98-152

RM-9338

**NOTICE OF PROPOSED RULE MAKING****Adopted: August 12, 1998****Released: August 21, 1998**

Comment Date: October 13, 1998

Reply Comment Date: October 28, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Avon Broadcasting Company ("petitioner") requesting the allotment of Channel 294A to Avon, North Carolina, as its first local aural service. Petitioner states that it will apply for the channel, if allotted.

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Petitioner states that Avon is a fast growing community with a fulltime population of 600, according to the Avon property Owner's Association, and a spring summer and autumn tourist population of several thousand people. According to petitioner, the population turnover during the three seasonal months reaches the tens of thousands. Further, it states that Avon has its own post office, fire department and numerous businesses. Petitioner also points out that Avon is one of the oldest communities on the Outer Banks and has become one of the largest communities on Hatteras Island. However, Avon is not listed in the U.S. Census. Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Avon is incorporated, or that it has social, economic, cultural, or governmental indicia which identify themselves with Avon to qualify it as a "community" for allotment purposes. See, e.g., Belview, Minnesota, 11 FCC Rcd 12793 (1996), Lupton, Michigan, 11 FCC Rcd 14428 (1996).<sup>1</sup>

<sup>1</sup> We note that Avon is listed in the 1998 Rand McNally Commercial Atlas and attributed with a fulltime population of 550 persons and a summer population of 1,500 persons. However, mere geographical location is not sufficient to establish "community" status. See, Vimville, Mississippi, 48 FR 5974 (1983), Hannibal, Ohio, 6 FCC Rcd 2144 (1991), and Columbia, California, 56 FR 26357 (1991), 6 FCC Rcd 3292 (1991).

3. We believe petitioner's proposal warrants consideration since the allotment of Channel 294A could provide Avon with its first local aural service, if it is determined to be a community for allotment purposes. Channel 294A can be allotted to Avon in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.<sup>2</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Avon, North Carolina	--	294A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before October 13, 1998, and reply comments on or before October 28, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, Jr.  
8404 Lee's Ridge Road  
Warrenton, VA 20186  
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

<sup>2</sup> The coordinates for Channel 294A at Avon are 35-21-06 North Latitude; 75-30-24 West Longitude.

decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.